

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EDWARD WIEGAND and EUGENIA SPRICH,)
TRUSTEES OF THE HERBERT C. WIEGAND)
REVOCABLE TRUST,)

Plaintiffs,)

v.)

NEW YORK LIFE INSURANCE & ANNUITY)
CORPORATION, and NEW YORK LIFE)
INSURANCE COMPANY,)

Defendants.)

No. 4:22-CV-00188-JCH

Jury Trial Demanded

DEPONENT'S RESPONSE IN OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL DEPOSITION TESTIMONY OF JOANN DYROFF

COMES NOW Deponent Joann Dyroff, by and through her attorney, and for her response to Defendants' motion to compel deposition testimony of Joann Dyroff states as follows:

1. Joann Dyroff is a licensed attorney in the State of Missouri working for the law firm Paule, Camazine & Blumenthal, P.C. who previously rendered legal services to the Plaintiffs related to the administration of the Herbert C. Wiegand Revocable Trust (the "Trust") following the death of Grantor Herbert C. Wiegand.

2. Joann Dyroff was served with a notice of deposition by the Defendants.

3. Prior to the request for Joann Dyroff's deposition, Defendants had served a subpoena for the production of the Trust administration file on Joann Dyroff and Paule, Camazine & Blumenthal, P.C. Paule, Camazine & Blumenthal, P.C. properly responded to this subpoena producing all non-privileged information, as well as a privilege log identifying

information not produced pursuant to the attorney-client privilege and its duties to maintain confidentiality.

4. Joann Dyroff was deposed on February 24, 2023. Joann Dyroff did not answer several questions asked by Defendants based on her good faith belief that the information sought was subject to her duty to maintain confidentiality and the attorney-client privilege.

5. Joann Dyroff did not refuse to answer the questions in an attempt to be evasive or to hinder the proceedings but did so with the belief that she could not those specific questions without a waiver of the privilege by the Plaintiffs or an Order of this Court.

6. Section 491.060, R.S.Mo., states: “The following persons shall be incompetent to testify:...(3) An attorney, concerning any communication made to the attorney by such attorney’s client in that relation, or such attorney’s advice thereon, without the consent of such client.”

7. “Our statute, which is declaratory of the common law rule, provides that an attorney shall be incompetent to testify concerning any communication made to him by his client in that relation, or his advice thereon, without the consent of such client.” *State ex rel. Great Am Insurance Co. v. Smith*, 574 S.W.2d 379, 386 (Mo. 1978).

8. Pursuant to Missouri Supreme Court Rules 4-1.6 and 4-1.9(c), Joann Dyroff cannot divulge the information sought without her client’s consent, or unless there is an order of the Court.

9. Joann Dyroff believes that the questions certified by Defendants were covered by the referenced statute or Supreme Court Rules.

10. Joann Dyroff was not contacted by the movant before the motion was filed as required by FRCP 37.

11. Joann Dyroff believes that she was substantially justified in refusing to answer the certified questions without the express consent of the client or without court order.

WHEREFORE, Joann Dyroff respectfully requests an order of this Court denying Defendants' motion to compel deposition testimony, and for such further relief as the Court deems just and proper.

Respectfully submitted,

PAULE, CAMAZINE & BLUMENTHAL
A Professional Corporation

By: /s/ David M. Slaby

David M. Slaby, #48035MO
165 N. Meramec Ave., Suite 110
St. Louis, MO 63105-3772
Telephone: (314) 727-2266
Direct: (314) 244-3650
Facsimile: (314) 727-2101
Email: dslaby@pcblawfirm.com
Attorneys for Deponent Joann Dyroff

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2023 I electronically filed the foregoing with the Clerk of the court by using CM/ECF systems which will send a notice of electronic filing to all counsel of record.

By: /s/ David M. Slaby